IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
December 10, 2002 Session

STATE OF TENNESSEE v. GARY S. GREVE

Appeal from the Criminal Court for Hamilton County
No. 235340 Douglas A. Meyer, Judge

No. E2002-00999-CCA-R3-CD
March 27, 2003

The defendant, Gary S. Greve, was convicted after a bench trial of driving under the influence. See Tenn. Code Ann. § 55-10-401. The trial court imposed a sentence of eleven months, twenty-nine days, with all but forty-eight hours suspended. In this appeal as of right, the defendant contends that his initial stop by police was not supported by reasonable suspicion. The judgment is affirmed.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which JERRY L. SMITH and JAMES CURWOOD WITT, JR., JJ., joined.

Leonard M. Caputo, Chattanooga, Tennessee, for the appellant, Gary S. Greve.

Paul G. Summers, Attorney General & Reporter; Elizabeth B. Marney, Assistant Attorney General; and Carl Huskins, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At approximately 1:30 a.m. on August 25, 2000, Officer Todd Royval, a member of the Chattanooga Police Department's DUI unit, was on routine patrol when he observed the defendant driving a black Infiniti automobile northbound on Lee Highway. According to the officer, the defendant's car "drifted out of his [right-hand] traffic lane over the . . . line to the right" and then "jerked back." Officer Royval then turned on his cruiser's video camera and followed the vehicle. When the defendant's car again drifted to the right and out of its lane, nearly striking a curb, and then moved to the left, crossing the line separating the two northbound lanes of traffic, the officer initiated a traffic stop. While conceding that he saw no particular driving violations, Officer Royval explained that he had stopped the defendant based upon the vehicle's weaving in and out of its lane on three different occasions and the sudden correction of the vehicle the first time it drifted to the right. After the stop, the defendant failed several field sobriety tests and registered a blood alcohol content of .12%.

The defendant filed a pre-trial motion to suppress the evidence resulting from the investigatory stop on the grounds that Officer Royval did not have reasonable suspicion to believe that a criminal offense had been or was about to be committed. The trial court overruled the motion, finding that the officer had presented specific and articulable facts supporting a reasonable suspicion that the defendant was guilty of driving under the influence.

Both the state and federal constitutions protect individuals from unreasonable searches and seizures; the general rule is that a warrantless search or seizure is presumed unreasonable and any evidence discovered subject to suppression. U.S. Const. amend. IV; Tenn. Const. art. I, § 7; Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997). An automobile stop constitutes a "seizure" within the meaning of both the Fourth Amendment of the United States Constitution and Article I, section 7 of the Tennessee Constitution. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 450 (1990); Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Binion, 900 S.W.2d 702, 705 (Tenn. Crim. App. 1994); State v. Westbrooks, 594 S.W.2d 741, 743 (Tenn. Crim. App. 1979). The fact that the detention may be brief and limited in scope does not alter that fact. Prouse, 440 U.S. at 653; State v. Pulley, 863 S.W.2d 29, 30 (Tenn. 1993); Binion, 900 S.W.2d at 705; Westbrooks, 594 S.W.2d at 743. The basic question, as indicated, is whether the seizure was "reasonable." Binion, 900 S.W.2d at 705 (citing Sitz, 496 U.S. at 444). The state always carries the burden of establishing the reasonableness of any detention. See State v. Matthew Manuel, No. 87-96-III (Tenn. Crim. App., at Nashville, Nov. 23, 1988).

Among the narrowly defined exceptions to the warrant requirement is an investigatory stop. See Terry v. Ohio, 392 U.S. 1, 27-28 (1968). An investigatory stop is deemed less intrusive than an arrest. See id. In Pulley, our supreme court ruled that "the reasonableness of seizures less intrusive than a full-scale arrest is judged by weighing the gravity of the public concern, the degree to which the seizure advances that concern, and the severity of the intrusion into individual privacy." 863 S.W.2d at 30.

Our determination of the reasonableness of the stop of the vehicle depends on whether the officers had either probable cause or an "articulable and reasonable suspicion" that the vehicle or its occupants were subject to seizure for violation of the law. See Prouse, 440 U.S. at 663; State v. Coleman, 791 S.W.2d 504, 505 (Tenn. Crim. App. 1989). Probable cause has been generally defined as a reasonable ground for suspicion, supported by circumstances indicative of an illegal act. See Lea v. State, 181 Tenn. 378, 380-81, 181 S.W.2d 351, 352 (1944). While probable cause is not necessary for an investigative stop, it is a requirement that the officer's reasonable suspicion be supported by "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry, 392 U.S. at 21; Pulley, 863 S.W.2d at 30; Coleman, 792 S.W.2d at 505; see also State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992) (applying Terry doctrine in context of vehicular stop). In determining whether reasonable suspicion exists, an important factor in the analysis is that reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to

show probable cause. Pulley, 863 S.W.2d at 32 (citing Alabama v. White, 496 U.S. 325, 330 (1990)).

Courts considering the issue of reasonable suspicion must look to the totality of the circumstances. Those circumstances include the personal observations of the police officer, information obtained from other officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. Watkins, 827 S.W.2d at 294 (citing United States v. Cortez, 449 U.S. 411, 417-18 (1981)). Objective standards apply rather than the subjective beliefs of the officer making the stop. State v. Norword, 938 S.W.2d 23, 25 (Tenn. Crim. App. 1996).

When the trial court makes a finding of facts at the conclusion of a suppression hearing, the facts are accorded the weight of a jury verdict. State v. Stephenson, 878 S.W.2d 530, 544 (Tenn. 1994). The trial court's findings are binding upon this court unless the evidence in the record preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); see also Stephenson, 878 S.W.2d at 544; State v. Goforth, 678 S.W.2d 477, 479 (Tenn. Crim. App. 1984). Questions of credibility of witnesses, the weight and value of the evidence, and resolution of conflicts in evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from the evidence. Odom, 928 S.W.2d at 23.

The defendant relies primarily upon two cases: State v. Ann Elizabeth Martin, No. E1999-01361-CCA-R3-CD (Tenn. Crim. App., at Knoxville, Sept. 8, 2000), and State v. Binette, 33 S.W.3d 215 (Tenn. 2000). In Martin, a panel of our court reversed the defendant's conviction for driving under the influence after determining that the arresting officer did not have reasonable suspicion to support an investigatory stop. In that case, the officer had observed the defendant's vehicle enter a right-turn merge lane, cross over the solid white line marking the edge of the roadway, and then reenter the right-hand travel lane. This court observed that "[m]otorists are liable to change their mind when driving, and thus it is not unusual for a vehicle to enter a turn lane and then return to a travel lane without making a turn." No. E1999-01361-CCA-R3-CD, slip op. at 7. In Binette, a videotape established that the defendant was weaving within his own lane of traffic along a winding road. The videotape also established that "[the defendant] did not violate any rules of the road during the period in which the video camera recorded his driving." 33 S.W.3d at 219. Our supreme court determined that the defendant had proceeded correctly through a number of intersections and stop lights and had maintained a proper distance behind the vehicles he was following. It observed that during the entire videotaping, the defendant's vehicle only twice touched the centerline in his own lane. Under these circumstances, our high court held that there were not sufficient specific and articulable facts to support a reasonable suspicion justifying the investigatory stop.

The facts at issue are distinguishable from those in both Martin and Binette. Here, the officer observed the defendant's vehicle weave in and out of its lane of traffic three times in a very short time span. His attention was first attracted to the defendant's vehicle near the Brainerd Road intersection when it drifted out of its lane to the right "a pretty good distance," then "jerked" back

into its lane of travel. The videotape from the officer's cruiser reflects that the defendant's vehicle then weaved out of its lane once again to the right, nearly striking a curb, reentered its lane, and crossed the dividing line between the two northbound lanes. The road was straight and offered no impediments that would have explained the maneuvers. Unlike Martin, there is no indication here that the defendant's weaving was the result of indecision. In our view, the facts demonstrate more than mere imperfections in driving or inattention to detail. See State v. Don Palmer Black, No. 03C01-9812-CR-00424 (Tenn. Crim. App., at Knoxville, Dec. 29, 1999). Thus, Officer Royval had reasonable suspicion to warrant the investigatory stop of the defendant.

Accordingly, the judgment is affirmed.

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GARY R. WADE, PRESIDING JUDGE